



July 15, 2014

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of Protecting and Promoting the Open Internet;
GN Docket No. 14-28

Dear Ms. Dortch,

On behalf of Asian Americans Advancing Justice | AAJC, we submit the following preliminary comments regarding the importance of an open and free Internet to the Asian American community in response to the Federal Communication Commission's (Commission) Notice of Proposed Rulemaking regarding protecting and promoting the open Internet.¹

Advancing Justice | AAJC is dedicated to promoting a fair and equitable society for all by working for civil and human rights and empowering Asian Americans and other underserved communities. We provide the growing Asian American community with multilingual resources, culturally appropriate community education, and public policy and civil rights advocacy. In the communications field, Advancing Justice | AAJC works to promote universal access and reduce barriers to critical technology, services, and the media.

A free and open Internet ecosystem is critically important to the Asian American community for a number reasons including:

- levels the playing field for free speech, including for small and marginalized communities;
- empowers our community to organize politically and promote civic engagement;
- enables limited English proficient (LEP) Asian Americans to access critical information and services²;

¹ *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, FCC 14-61, Notice of Proposed Rulemaking, 79 Fed. Reg. 37447 (proposed May 15, 2014) (hereinafter *Open Internet NPRM*).

² See Asian Pacific American Legal Ctr. & Asian American Justice Ctr., *A Community of Contrasts: Asian Americans in the United States 2011* 27-29 (2011) (hereinafter *A Community of Contrasts*). Language access is a particularly important issue for the Asian American community given roughly one-third are LEP. For example, Vietnamese, Bangladeshi, Cambodian, Hmong, Taiwanese, Chinese, Korean, and

- creates opportunities for online education, especially for English language learners;
- supports the production and distribution of diverse content that meets the diverse cultural and linguistic needs of our community;
- lowers competitive barriers for small entrepreneurs to compete in the global marketplace; and
- provides lucrative economic and job opportunities for many in our community.³

These benefits inform our perspective and comments on policies and regulations the Commission has proposed to maintain a free and open Internet.

Transparency

We support the FCC's efforts to ensure consumers are informed of the network management practices, performance characteristics, and commercial terms of their ISPs.⁴ We agree the Commission should draw on its own experience and academic research to ensure such disclosures are accessible and understandable to end users.⁵

However, the Commission should conduct community outreach and work with community organizations to ensure enhanced disclosure to ensure such requirements meet the educational, cultural, and linguistic needs of these groups. This is especially important for LEP Asian Americans, other language minority groups, and underserved communities with low digital skills, broadband awareness, and broadband adoption rates.

Protect Freedom of Speech

As a civil rights organization, we value a diversity of voices. We advocate for the freedom of speech, especially to ensure that the public can access all viewpoints and speakers are allowed an opportunity to express their ideas and beliefs. Ownership of the media has grown more consolidated and minority ownership and participation is at record lows, threatening to drown out the voices of marginalized communities.⁶ The Internet counterbalances this by offering users the opportunity to share their opinions and stories with very little cost or barriers to entry, which in turn drives Internet demand and broadband investment and deployment.⁷

Laotian communities all have LEP rates over 40%. One in five Asian American households also live in linguistically isolated households, meaning all household members 14 years old and up speak English less than "very well."

³ *Open Internet NPRM* at ¶¶ 30-32.

⁴ *Preserving the Open Internet*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905, 17937, ¶ 54 (2010) (*Open Internet Order* or *Order*); *Open Internet NPRM* at ¶¶ 63-64.

⁵ *Open Internet NPRM* at ¶ 72.

⁶ One needs only look at the abysmal minority ownership rates of broadcast stations. *See Report on Ownership of Commercial Broadcast Stations*, MB Docket No. 14-50, MB Docket No. 09-182, MB Docket No. 07-294 (released June 27, 2014) (women own 6.3 percent and racial minorities own only 3.0 percent of full power television stations).

⁷ *See Verizon v. FCC*, 740 F.3d 623, 644-45 (D.C. Cir. 2014) (finding restrictions on edge providers' ability to reach end users reduces the rate of innovation); *Open Internet NPRM* at ¶ 26 ("limiting end users' ability



We support the Commission's principles of the no-blocking rules it adopted in the *Open Internet Order*⁸ for fixed broadband services. As the line between mobile devices and computers continues to blur, we agree with the Commission that it should consider whether further open Internet protections should apply to mobile broadband services.⁹ As the Commission noted, in 2011 Blacks and Latinos were more than twice as likely as whites to rely on their smartphones as their exclusive source of Internet access and low income consumers were twice as likely to use their smartphones as their exclusive Internet source than those with higher incomes.¹⁰ The Commission should also note that Asian Americans have the highest smartphone adoption rate, followed by Latinos and Blacks.¹¹ Because communities of color are more likely to access the internet via their mobile devices, the Commission must ensure the ability of minority communities to access, produce, and freely distribute diverse content regardless of the technology.

We also agree that the Commission should ensure edge providers have a minimum level of access to end-user subscribers that allows users to have an Internet experience that is "sufficiently robust, fast, and effectively usable."¹²

Protect against discrimination and promoting competition

Civil rights groups have always stood against discrimination in traditional areas such as employment, housing, and lending, and have advocated for fairness and equity. Similar principles should apply to the Internet. The Commission must ensure that small, independent, and minority entrepreneurs with limited resources are able to compete in the Internet marketplace, and that costs and burdens are not shifted to underserved communities as a result of its rules.

This issue is particularly important to Asian Americans because mainstream media outlets often do not cater to our community, nor do they accurately portray Asian Americans or depict positive Asian stereotypes.¹³ Shunned by mainstream media, Asian Americans have flocked to the Internet to produce content that is relevant to our community and to become stars in their own right.¹⁴ Due in part to a lack of relevant

to choose which edge providers to patronize, would reduce the rate of innovation at the edge and, in turn, the likely rate of improvements to network infrastructure).

⁸ *Open Internet NPRM* at ¶ 94.

⁹ *Id.* at ¶ 105-106.

¹⁰ *Id.* at ¶ 106 n. 228.

¹¹ *Multiplying Mobile: How Multicultural Consumers are Leading the Smartphone Adoption*, Nielsen <http://www.nielsen.com/content/corporate/us/en/insights/news/2014/multiplying-mobile-how-multicultural-consumers-are-leading-smartphone-adoption.html> (last visited July 14, 2014).

¹² *Open Internet NPRM* at ¶ 98.

¹³ The highest rated mainstream television shows among Asian Americans are shows that have Asian American actors, which indicates a strong desire among Asian Americans to see people who resemble them. Nielsen, *State of the Asian American Consumer: Growing Market, Growing Impact*, 11 (2012), <http://www.nielsen.com/content/dam/corporate/us/en/microsites/publicaffairs/StateoftheAsianAmericanConsumerReport.pdf> (hereinafter *State of the Asian American Consumer*).

¹⁴ See Robert Ito, *Asian American actors find a home on YouTube*, LOS ANGELES TIMES, June 22, 2012, <http://articles.latimes.com/2012/jun/22/entertainment/la-ca-yomyomf-20120624>; Hayley Tsukayama, *YouTube channel YOMYOMF launches, focus on Asian-American pop culture*, THE WASHINGTON POST, June 15, 2012, http://www.washingtonpost.com/business/technology/youtube-channel-yomyomf-launches-focus-on-asian-american-pop-culture/2012/06/15/gJQAHEbKfV_story.html; Andrew Lam, *The 'Bamboo*



content for our community, Asian Americans collectively have the highest rates of broadband adoption and Internet usage.¹⁵

Asian Americans are *avid* web surfers and online video viewers. Asian Americans spend an average of 12 hours and 23 minutes a month watching videos on the Internet, which is twice as much as the general population.¹⁶ They view 3,600 web pages monthly, which is 1,000 more pages per month than any other group, and they visit websites more frequently and for longer durations than any other group.¹⁷ For example, Asian Americans visit entertainment websites 19.35% more often, spend 37.90% more time, and visit 33.53% more pages than the total population.¹⁸ The largest differences between Asian Americans and the general population is with YouTube, where Asian Americans are 38% more likely to visit YouTube, 62% more likely to spend more time on the site, and 72% more likely to visit more YouTube pages.¹⁹ With this in mind, the Commission must ensure that its rules promote small, independent, and minority entrepreneurs and not disadvantage them, and that the content they produce must be freely accessible.

The Commission has proposed “a rule requiring broadband providers to use ‘commercially reasonable’ practices in the provision of broadband Internet access service.”²⁰ Although we support the Commission’s efforts to craft open Internet rules that comply with the *Verizon* court’s decision, we have concerns whether the commercially reasonable standard described by Chairman Wheeler²² and the Commission sufficiently protects the interests of small, independent, and minority entrepreneurs and the communities that are served by these entrepreneurs.

Ceiling’: Hollywood Shuns Asians, While New Media Embraces Them, NEW AMERICA MEDIA, January 26, 2014, <http://newamericamedia.org/2014/01/the-bamboo-ceiling-hollywood-shuns-asians-while-new-media-embraces-them.php>; Austin Considine, *For Asian-American Stars, Many Web Fans*, THE NEW YORK TIMES, July 29, 2011, <http://www.nytimes.com/2011/07/31/fashion/for-asian-stars-many-web-fans.html>.

¹⁵ See Econ. & Statistics Admin. and Nat’l Telecomm. & Info. Admin., U.S. Dep’t of Commerce, *Exploring the Digital Nation: Home Broadband Internet Adoption in the United States* (2010) (77 percent AAPI household adoption); Nat’l Telecomm. & Info. Admin., U.S. Dep’t of Commerce, *Digital Nation: Expanding Internet Usage* 11 (2011) (68.8 percent home broadband adoption rate for AAPIs); Lee Rainie, Pew Research Center, *Asian-Americans and Technology* (2011), available at

<http://www.pewinternet.org/Presentations/2011/Jan/~//media/Files/Presentations/2011/Jan/2011%20-%20pdf%20-%20Asian%20Americans%20-%20DC.pdf> (English polls result in “substantially upscale APA population [with higher] educational attainment and household income”). Advancing Justice | AAJC warns that these studies do not provide an accurate or complete picture of the Asian American community because these studies were conducted in English and did not disaggregate Asian Americans into separate ethnicities. As mentioned, *supra*, one-third of Asian Americans are LEP, and these studies most likely did not account for LEP individuals, and there are great income and educational disparities within the Asian American community. See generally *A Community of Contrasts*, *supra* note 2.

¹⁶ Nielsen, *Significant, Sophisticated, and Savvy: The Asian American Consumer 2013 Report*, 21 (2013), <http://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2013%20Reports/Asian-American-Consumer-Report-2013.pdf>.

¹⁷ *State of the Asian American Consumer*, *supra* note 13, at 10.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Open Internet NPRM* at ¶ 116.

²² Tom Wheeler, *Finding the Best Path Forward to Protect the Open Internet*, FCC, Apr. 29, 2014, <http://www.fcc.gov/blog/finding-best-path-forward-protect-open-internet>.



As the Commission has noted, many commenters have expressed concerns of the effect of paid prioritization on Internet openness.²³ A commercially reasonable standard where certain forms of prioritization are allowed benefits those with financial resources. Such prioritization would negatively impact many minority entrepreneurs who come from historically disadvantaged communities with lower incomes and educational opportunities, as well as entrepreneurs who cater to smaller niche markets, such as the Asian American community, where there is a demand for content from a smaller audience which does not result in large revenues. Given the Asian American community's heavy reliance on data-intensive video streaming, paid prioritization could also negatively impact the Internet experience of our community.

To be clear, we do not advocate for blanket prohibitions on data discrimination or prioritization. For example, we previously supported²⁴ the Commission's *Open Internet Order* which allowed broadband providers to offer "specialized services."²⁵ We also recognize that certain forms of data prioritization and future innovations may require prioritization and would provide a great public benefit.

The Commission lists factors it will consider when administering the commercially reasonable practices standard, such as the "*Impact on Present and Future Competition*" and the "*Impact on Consumers*."²⁶ The Commission should explicitly consider and protect against the negative impact of paid prioritization on minority communities. As the Communications Act makes clear, the Commission was created "[f]or the purpose of regulating interstate . . . communication by wire and radio so as to make [it] available, so far as possible, to all the people of the United States, *without discrimination on the basis of race, color, religion, national origin, or sex*["²⁷

Legal Authority

The Commission seeks comment whether to exercise its authority under § 706 of the Telecommunications Act or to reclassify broadband Internet access as a telecommunications service to exercise its authority under Title II.²⁸

As mentioned above, although we agree that rules promulgated under § 706 authority will make significant strides to protect and promote an open Internet, we have concerns whether such protections, as described by the Commission, will sufficiently protect the interests of small, independent, and minority entrepreneurs and communities. Moreover, we note that authority under § 706 is premised on the encouragement of advanced telecommunications capabilities, and in the case of § 706(b), giving the Commission

²³ *Open Internet NPRM* at ¶ 116.

²⁴ Press Release, Asian American Justice Center, AAJC Commends FCC Open Internet Proposal (Dec. 14, 2010), <http://oldwww.advancingequality.org/news-releases/aajc-commends-fcc-open-internet-proposal> (in 2013 Asian American Justice Center joined three other Asian American civil rights organizations to launch Asian Americans Advancing Justice).

²⁵ See *Open Internet NPRM* at ¶ 60; *Open Internet Order*, 25 FCC Rcd at 17909, 17965-66, ¶¶ 7, 112-14.

²⁶ *Open Internet NPRM* at ¶¶ 124, 129.

²⁷ 47 U.S.C. § 151 (emphasis added).

²⁸ *Open Internet NPRM* at ¶ 142.



authority to act when it makes a negative finding of adequate deployment.²⁹ We urge the Commission to consider crafting more policies that are independent of the deployment premises of § 706 that explicitly protect communities of color and promote small, independent, and minority entrepreneurs to enter the marketplace.³⁰

Regarding Title II, we cannot support nor oppose the Commission's use of this authority without further information on how this authority would be applied and how it would impact the economic opportunities and accessibility of content on the Internet for communities we represent. Which sections of Title II will it forbear and how would that affect investment, innovation, and consumers?³¹ How will prices for broadband Internet services be affected if they were reclassified as telecommunications services? For example, the average rate of taxation for wireless telecommunication services is about 17% and bipartisan legislation has been proposed to freeze these taxes.³² Would the same happen to broadband Internet?³³ Will the Commission consider whether Congress renews the federal moratorium on Internet-access taxes?³⁴

The Commission must also consider how proceeding under § 706 or Title II will affect Universal Service Fund (USF) programs, which are currently transitioning to support broadband services. The Commission has yet to determine how or whether it will change which services must contribute to the USF.³⁵ How would reclassification affect the overall contribution rate to the USF and would it raise or lower prices for consumers?

Other Laws and Considerations

The Commission correctly notes that it has a responsibility to provide “certainty, guidance, and predictability to the marketplace” as it protects and promotes the Internet.³⁶ The Commission's attempts to craft rules to ensure an Open Internet have twice been overturned by the D.C. Circuit and no one benefits if the Commission's rules are overturned yet again.

Regulatory uncertainty leaves consumers in the dark and hampers innovation, investment, and job creation for both ISPs and edge providers. This is particularly important to the Asian American community due to very high participation rates among certain Asian

²⁹ *Id.* at ¶ 143.

³⁰ See Open Internet NPRM at ¶¶ 156-58 (citing §§ 303 and 316 to promote the public interest); see also 47 U.S.C. § 309(j)(3)(B) (promoting economic opportunities for minorities and women in the wireless license context); § 151 (ensuring availability of telecommunications services without discrimination); .

³¹ *Id.* at ¶¶ 153-55.

³² David Goldman, *The hidden 17% tax: Your cell phone bill*, CNN, July 10, 2013, <http://money.cnn.com/2013/07/10/technology/mobile/wireless-taxes/>.

³³ Steve Pociask, *A Perfect Storm: Net Neutrality And The End of The Internet Tax Moratorium*, FORBES, July 7, 2014, <http://www.forbes.com/sites/realspin/2014/07/07/a-perfect-storm-net-neutrality-and-the-end-of-the-internet-tax-moratorium/>.

³⁴ See *id.*

³⁵ See the Commission's proceeding, *In re. Universal Service Contribution Methodology*, WC Docket No. 06-122.

³⁶ Open Internet NPRM at ¶¶ 163, 165.



subgroups in the edge provider industry³⁷ and as well opportunities for Asian American suppliers for ISPs.³⁸

We agree with the Commission's observation that end users and edge providers must have effective access to dispute resolution.⁴⁰ Proving violations can also be difficult, time-consuming, and costly. Consumers should have an accessible and affordable dispute resolution process. The Commission should also monitor and collect data to measure whether its policies promote broadband deployment, competition, and innovation, as well as protect vulnerable communities.

Closing the Digital Divide

While keeping the Internet free and open is a commendable goal and invokes passionate responses, civil rights groups are especially aware of the digital divide in this country where nearly 30 % of American households have not adopted home broadband Internet and adoption rates in minority, low-income, and other disadvantaged communities are below the national average.

The Commission must ensure it has a clear legally justifiable regulatory framework to implement the National Broadband Plan, including expanding and modernizing the Lifeline program to include broadband, deploying high speed networks to all communities, and increasing broadband adoption through promoting digital skills and awareness.

We hope the Commission considers and addresses our concerns as it works to promote and protect an open Internet. If you have any questions or would like to discuss further our comments, please contact Asian Americans Advancing Justice | AAJC senior staff attorney Jason T. Lagria at jlagria@advancingequality.org or 202-296-2300 ext 122.

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³⁷ Asian American employment rates at edge provider companies average between 30 to 40% even though Asian Americans make up approximately 5% of the U.S. workforce. See Alison Griswold, When It Comes to Diversity in Tech, Companies Find Safety in Numbers, SLATE, June 27, 2014, http://www.slate.com/blogs/moneybox/2014/06/27/tech_diversity_data_facebook_follows_google_yahoo_in_releasing_the_stats.html (Percent of U.S. employees who are Asian American: Google (30%), Facebook (34%), Yahoo (39%), LinkedIn (38%)), but see, Jason T. Lagria, *No, Volokh: Asian is Not The New White*, AAPI VOICES, June 6, 2014, <http://aapivoices.com/stem-aapi-not-white/> (Asian American STEM participation rates are not equal among Asian subgroups and is particularly concentrated among certain groups).

³⁸ For example, in 2012 California's telecommunications and utilities reported over \$5 billion in contracts with minority owned businesses, although the percent spend is less than the proportion of the population for Latinos, Asian Americans and Pacific Islanders, and African Americans. See Samuel Kang & Erin Delaney, *2013 Supplier Diversity Report Card: California Breaks \$8 Billion*, 6-7 (2013), <http://greenlining.org/wp-content/uploads/2013/06/2013-SD-Report-Card-to-post.pdf>.

⁴⁰ *Open Internet NPRM* at ¶¶ 163, 170.

